

# **EXHIBIT 92**

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF VIRGINIA  
3 NORFOLK DIVISION

4 CSX TRANSPORTATION, INC.,  
5 individually and on behalf of  
6 NORFOLK & PORTSMOUTH BELT LINE  
7 RAILROAD COMPANY,

8 Plaintiff,

CIVIL ACTION FILE

9 vs.

NO. 2:18cv530

10 NORFOLK SOUTHERN RAILWAY  
11 COMPANY, NORFOLK & PORTSMOUTH  
12 BELT LINE RAILROAD COMPANY,  
13 JERRY HALL, THOMAS HURLBUT,  
14 PHILIP MERILLI, and CANNON  
15 MOSS,

16 Defendants.

17 VIDEO DEPOSITION OF

18 JOHN BOOTH

19 March 12, 2020

20 9:57 a.m.

21 McGuireWoods LLP

22 1230 Peachtree Street

Suite 2100

Atlanta, Georgia

Robyn Bosworth, RPR, CRR, CRC, CCR-B-2138

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1 is in -- is far in excess of the cost to move  
2 freight from NIT, right?

3 A Yes.

4 Q And I'm asking you, sir, whether you ever  
5 determined or tried to determine what the cost to  
6 move freight from the -- from NIT was for the Belt  
7 Line.

8 A I did not.

9 Q Okay. So you cannot verify that  
10 Mr. Ingram's statement is correct?

11 A Correct.

12 Q All right. But he certainly is looking at  
13 or comparing the Belt Line's tariff rate that would  
14 apply for moving traffic to or from NIT with the  
15 cost of doing so, correct?

16 A Yes.

17 Q All right. And then he does in the next  
18 sentence refer to that \$148.50 tariff rate, correct?

19 A Yes.

20 Q And if you look back at Exhibit 3, that's  
21 the rate that was recommended by the rate committee  
22 in 2006 and adopted by the Belt Line board in 2007,

1 suggesting that rate of \$148.50 is in -- is far in  
2 excess of the cost of the Belt Line to move freight  
3 from NIT, correct?

4 A Those are his words, yes --

5 Q Okay.

6 A -- far in excess.

7 Q And I think we've already established that  
8 you have no knowledge as to whether that rate is, in  
9 fact, far in excess of the cost of the Belt Line to  
10 move freight from NIT, correct?

11 A I have no such knowledge, that's correct.

12 Q All right. All right. First page of  
13 Exhibit 4, the last paragraph, the second sentence  
14 reads: This is best accomplished by offering rates  
15 which provide competitive access to all NPBL  
16 customers.

17 I'm going to stop there because who do you  
18 consider to be NPBL's customers?

19 A Any industry that is switched by NPBL. It  
20 might be Perdue. It might be Lehigh Cement. Those  
21 are the ones I've heard of. I'm sure there are  
22 other one and -- one-car, two-car pulls and

1     you don't recall whether you received this  
2     information or not, right?

3             A     I don't recall seeing it, no.

4             Q     All right. Did -- in your work on the  
5     rate committee, did you ever inquire as to the costs  
6     or expenses of the Belt Line associated with their  
7     line haul switching services?

8             A     I don't recall doing so.

9             Q     All right. Was that important to your  
10    work?

11            A     It would have been relevant to the work of  
12    the rate committee, but to what I was doing, only to  
13    the extent that I would receive input from finance  
14    or intermodal as to whether it was a viable charge.

15            Q     So let me make sure I understand.

16                    You said it would be relevant to the work  
17    of the rate committee, which you were on, right?

18            A     Yes.

19            Q     But I guess am I to understand what you're  
20    saying is what you did on the rate committee, that  
21    part of it you weren't concerned with the expenses  
22    or costs of the Belt Line?

1           A     That's correct.

2           Q     Okay. Other folks on the committee, from  
3 your perspective, dealt with that?

4           A     Yes.

5           Q     Okay. You were trying to establish a rate  
6 that CSX would pay to use the Belt Line for the  
7 movement of intermodal freight?

8           A     Correct.

9           Q     Okay. Looking at this financial  
10 information --

11          A     I have to retract a statement I made a  
12 short while ago.

13          Q     Okay.

14          A     I do recall looking at this line haul  
15 revenue cost analysis for the first six months  
16 because I was trying to figure out who some of these  
17 customers were.

18          Q     Okay.

19          A     So I did look at it, I know that.

20          Q     So let's go there. For the record, it's  
21 Bates stamped NPBL 008787, correct?

22          A     Uh-huh.

1           A     Correct.

2           Q     And so it was not certain what issues may  
3     come up in that move, and it hadn't been done,  
4     correct?

5           A     Right.

6                     (Defendant's Exhibit 30 was marked for  
7     identification.)

8     BY MR. LACY:

9           Q     Pass you Exhibit 30.

10                    Mr. Booth, this is another e-mail chain  
11     with an attachment, and the last e-mail is from you  
12     to Mr. Armbrust and Mr. Eliasson dated November 1,  
13     2010.

14                    Do you recall this exchange?

15           A     Let's see, November 1. Yes, I recall  
16     this.

17           Q     Okay. And the attachment looks to be a  
18     draft NIT solid train interchange and rail  
19     transportation agreement; is that right?

20           A     Yes.

21           Q     And is this a draft agreement that CSXT  
22     prepared for the movement of intermodal freight by

1 the Belt Line to and from NIT?

2 A Yes.

3 Q So, in other words, if the Belt Line ended  
4 up agreeing to your proposal, this draft contract  
5 would -- might not be the final version would -- but  
6 is a proxy of what a contract between the Belt Line  
7 and CSXT would look like, right?

8 A Yes.

9 Q Okay. Now, going back to the cover  
10 e-mail, your forward to Mr. Armbrust says:  
11 Confidential, attorney-client privilege, FYI.

12 I noticed when you were forwarding  
13 documents to Mr. Armbrust before this time period,  
14 you hadn't included the "confidential,  
15 attorney-client privilege" moniker.

16 Is there a reason why you included it in  
17 this one?

18 A I don't recall what the reason was. I may  
19 have been admonished by Mr. Armbrust for not having  
20 included it earlier.

21 Q Okay.

22 A I don't know.